

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

In the Matter of)
the Application of)
MARTHA S. BYERS, M.D.)
License No. 4-18704)
_____)

Docket No. 02-HA-06

STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER

COME NOW, the Kansas State Board of Healing Arts ("Board") by and through Kelli J. Benintendi, Associate Counsel, and Martha S. Byers, M.D. ("Licensee") appearing *pro se*, and stipulate and agree to the following:

1. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of medicine and surgery. K.S.A. 65-2801 *et seq.*; K.S.A. 65-2869.
2. Licensee admits that this Stipulation and Agreement and Enforcement Order ("Stipulation") and the filing of such document are in accordance with applicable law and that the Board has jurisdiction to consider the Stipulation.
3. Licensee agrees that the Kansas Healing Arts Act is constitutional on its face and as applied in this case.
4. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.
5. On July 1, 1980, Licensee was originally granted license number 04-18704 to practice

medicine and surgery in Kansas. Licensee then canceled her license on June 5, 1990, and ceased practicing medicine.

6. On or about July 7, 2000, Licensee was granted reinstatement of her license to exempt status.

7. On or about June 1, 2001, Licensee filed a request to change the status of her license from exempt to active.

8. Licensee acknowledges that it is appropriate for her practice of medicine to be limited in its scope and setting until such time as her clinical skills and competency can be fully ascertained.

9. According to K.S.A. 65-2838(b), the Board has authority to enter into this Stipulation without the necessity of proceeding to a formal hearing.

10. Licensee voluntarily and knowingly waives her right to a hearing. Licensee voluntarily and knowingly waives her right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

11. The terms and conditions of the Stipulation are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Stipulation shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Stipulation on behalf of the Board.

12. In consideration of the conditions, terms, covenants, and promises contained herein, the parties agree as follows:

(a) In lieu of the conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Stipulation, hereby voluntarily agrees to the following limitations to be placed on her license to engage in the practice of medicine and surgery in the State of Kansas:

- (i) Licensee shall be limited in her scope of practice to practicing only under the general supervision and direction of Howard Ellis, M.D. and James Mirabile, M.D. in the areas of well-woman care and cosmetic medicine. Such practice may include, but not be limited to, Licensee performing well-patient checkups and routine pap smears, photo rejuvenation of the face and neck, laser hair removal, laser vein and telangiectasia therapy, microdermabrasion and administering Botox injections;
- (ii) Licensee shall not engage in the solo practice of medicine and surgery and shall only practice in the above-specified settings with ongoing supervision by Dr. Ellis and Dr. Mirabile;
- (iii) Licensee shall immediately notify the Board if she discontinues practicing in the above-settings; and
- (iv) Licensee must obtain prior Board approval before modifying or discontinuing any of the requirements of this Stipulation.

(b) This Order constitutes limitations on Licensee's license to practice medicine and surgery in the State of Kansas. These limitations shall remain in effect until modified or terminated by Order of the Board.

(c) Licensee's failure to comply with the provisions of the Stipulation will result in the Board taking disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

(d) Nothing in this Stipulation shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 65-4921 *et seq.*, that are known or unknown and are not covered under this Stipulation, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

(e) Licensee hereby releases the Board, its individual members (in their official and personal capacities), its attorneys, employees and agents (hereinafter individually or jointly referred to as "Releasees"), from any and all claims and causes of action, including but not limited to, those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* arising out of the investigation and acts leading to the execution of this Stipulation. This release shall forever discharge the Releasees from any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

(f) Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported to the National Practitioner Databank, Federation of State Medical Boards, and any other reporting entities requiring disclosure of this Stipulation.

(g) This Stipulation, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

(h) Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

(i) Licensee, by signature to this document, waives any objection to the participation of the Board members in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member in any future proceeding on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

(j) Licensee acknowledges that she has read this Stipulation and fully understands the contents.

(k) Licensee acknowledges that this Stipulation has been entered into freely and voluntarily.

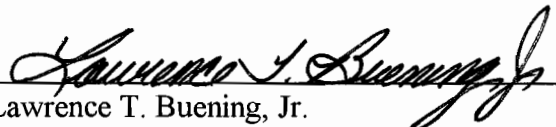
(l) All correspondence or communication between Licensee and the Board relating to this Stipulation shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Kelli J. Benintendi, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

(m) Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Stipulation or may become effective subsequent to the execution of this document.

(n) Upon execution of this Stipulation by affixing a Board authorized signature below, the provisions of this Stipulation shall become an Order under K.S.A. 65-2838. This Stipulation shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

IN WITNESS WHEREOF, the parties have executed this agreement on this 20th day of August, 2001.

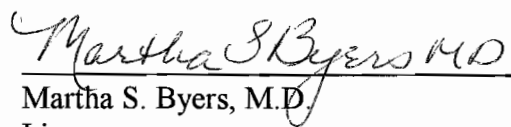
KANSAS STATE BOARD OF HEALING ARTS



Lawrence T. Buening, Jr.
Executive Director

August 20, 2001

Date



Martha S. Byers, M.D.
Licensee

8/18/01

Date

Prepared By:

Kelli J. Benintendi

Kelli J. Benintendi #16032
Associate Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413

CERTIFICATE OF SERVICE

I, Kelli J. Benintendi, Associate Counsel, Kansas Board of Healing Arts, hereby certify that I served a true and correct copy of the **STIPULATION AND AGREEMENT AND ENFORCEMENT ORDER** by United States mail, postage prepaid, on this 20th day of August, 2001, to the following:

Martha S. Byers, M.D.
12909 Granada
Leawood, Kansas 66209

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068

Kelli J. Benintendi
Kelli J. Benintendi
Associate Counsel